

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,,  
Plaintiff,  
v.  
LENNIE LUAN LE,  
Defendant.

Case No. 5:13-cr-00076-RMW

**ORDER DENYING MOTION FOR  
ACQUITTAL AND MOTION FOR NEW  
TRIAL**

**I.**

Defendant Lennie Le (“Le”) has filed a motion for acquittal and a motion for new trial. The motion for acquittal is based upon an alleged insufficiency of the evidence. He focuses on Count Three, which charged an interference with commerce by threats or violence. The jury hung on Count Three, and the court granted a mistrial on that count. Le argues that there was no evidence that he personally threatened the two victim owners of the Sau Café.

It is true that defendant never personally and expressly threatened violence. However, the evidence was overwhelming that Le was involved in a conspiracy that operated an illegal gambling business and that he demanded funds from the victim owners with the implied threat that if they failed to turn over the required percentage of the gambling revenue, they would be subject to violent consequences at the hands of one or more of the conspirators. The evidence was more

1 than sufficient to show that Le, as a co-conspirator, was responsible for the fear he and his co-  
2 conspirators instilled in the victim owners.

## 3 II.

4 Le also contends that there was no evidence that defendant's action affected interstate  
5 commerce. He primarily argues that there was no nexus between the extortion and interstate  
6 commerce.

7 Only a *de minimis* effect on interstate commerce is required to establish jurisdiction under  
8 the Hobbs Act, and the effect need only be probable or potential, not actual. *United States v. Lynch*,  
9 437 F.3d 902, 908-09 (9th Cir. 2006). An interstate nexus may arise from either direct or indirect  
10 effects on interstate commerce. *Id.* at 909-10. In the present case, there was a nexus between the  
11 Sau Café's purchase and sale of coffee and interstate commerce. The coffee the owners bought  
12 came from foreign countries, and the amount they needed and could buy and then sell at their café  
13 in California was at least slightly affected by the extortion and illegal gambling business. That is  
14 enough to meet the interstate commerce connection.

## 15 III.

16 Le contends that he is entitled to a new trial on the illegal gambling counts charged in  
17 Counts One and Two because the Government failed to disclose the names of waitresses at the  
18 Sau Café. The Government submitted to the court *in camera* shortly before trial commenced San Jose  
19 police reports of which the Government had possession detailing the San Jose police department's  
20 investigation of the Sau Café. The court reviewed the reports and then ordered the Government to give  
21 copies of them to the defense. The Government did so, but, unknown to the court, it did so with information  
22 identifying the waitresses redacted. The defense now claims that those waitresses may have been able to  
23 offer evidence that would have impeached the testimony of the two victim owners.

24 The court is troubled by the Government's unilateral decision to redact identifying information  
25 without first obtaining permission from the court. However, the defense never raised an issue  
26 about the redactions prior to or during trial. Further, the Government did not redact any  
27 information obtained from the waitresses concerning the operation of the cafe. The San Jose

1 officers who did investigate the Sau Café testified at trial but were not asked for the names of the  
2 waitresses. The defense was able to fully cross-examine the victim owners concerning illegal  
3 activities at the Sau Café (nude waitresses, smoking, gambling, etc.). The idea that the defense  
4 would have been able to locate the former waitresses and uncover some evidence from them that  
5 would have been helpful is highly speculative at best.

6 **IV.**

7 The court denies the motion for acquittal and for a new trial. The courtroom deputy will  
8 contact the parties to set a sentencing date.

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10 **IT IS SO ORDERED.**

11 Dated: November 16, 2015



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13 Ronald M. Whyte  
14 United States District Judge  
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